



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

SATS No. MT-033-FOR; Docket ID OSM-2011-0012

Montana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of Montana's response to the Office of Surface Mining Reclamation and Enforcement's (OSM) November 22, 2011, letter pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes changes to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that pertain to coal prospecting. Montana intends to revise its program to comply with changes made in the 2011 Montana Legislature as a result of the passage of Senate Bill 286.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 p.m., m.s.t. [Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., m.s.t. on [Insert date 15 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments by any of the following

methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). This proposed rule has been assigned Docket ID: OSM-2011-0012. If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions.
- Mail/Hand Delivery/Courier:  
Jeffrey Fleischman, Director  
Casper Field Office  
Office of Surface Mining Reclamation and Enforcement  
Dick Cheney Federal Building, POB 11018, 150 East B  
Street  
Casper, Wyoming 82601-1018

**Instructions:** All submissions received must include the agency name and "MT-033-FOR." For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading in the SUPPLEMENTARY INFORMATION section of this document.

**Docket:** In addition to viewing the docket and obtaining

copies of documents at [www.regulations.gov](http://www.regulations.gov), you may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director

Casper Field Office

Office of Surface Mining Reclamation and Enforcement

Dick Cheney Federal Building, POB 11018, 150 East B Street

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(307) 261-6555

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Telephone: (307) 261-6555. Internet: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Montana Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the

Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, Federal Register (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

## **II. Description of the Proposed Amendment**

By letter dated July 20, 2011, Montana sent us a proposed amendment to its program (Administrative Record Docket ID No. OSM-2011-0012) under SMCRA (30 U.S.C. 1201 et seq.). Montana submitted the amendment to include changes made to the MSUMRA as a result of the 2011 Montana Legislature passage of Senate Bill 286 relating to coal prospecting.

Specifically, Montana proposes to amend the MSUMRA to modify the coal prospecting procedures to allow for a new type of coal prospecting permit when prospecting is conducted to determine the location, quantity, and quality of coal that is (1) outside an area designated as unsuitable, (2) does not remove more than 250 tons, and (3) does not substantially disturb the natural land surface. The effect of the modified procedures causes MSUMRA to have three tiers of prospecting regulation, rather than the currently

approved two tiers. The full text of the program amendment is available for you to read at the locations listed above under ADDRESSES.

We announced receipt of the proposed amendment in the October 17, 2011, Federal Register (200 FR 64047; Administrative Record No. OSM 2011-0012-0001), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 17, 2011. We received comments from the Mine Safety and Health Administration stating that it agreed with the proposed revisions. We did not receive any comments from the general public.

During our review of the amendment, we identified areas needing clarification at MSUMRA Section 82-4-226. We notified Montana of our concerns by letter dated November 22, 2011 (Administrative Record No. OSM-2011-0012-0005). Montana responded in a letter dated December 22, 2011, by submitting additional explanatory information (Administrative Record No. OSM-2011-0012-0006). Specifically, Montana clarified when prospecting operations would be

regulated under proposed MSUMRA Section 82-4-226(7), and that prospecting operations conducted under proposed MSUMRA Sections 82-4-226(7)(b) and (8) would not be allowed to substantially disturb the natural land surface. Finally, Montana clarified that proposed MSUMRA Section 82-4-226(7) would be interpreted and implemented based upon legislative history and the rules of statutory construction so that when operations are permitted under MSUMRA Section 82-4-226(8), subsections (1) and (2) would not apply, but subsections (3) through (6) would apply.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

#### **Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including

your personal identifying information - may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We cannot ensure that comments received after the close of the comment period (see DATES) or sent to an address other than those listed above (see ADDRESSES) will be included in the docket for this rulemaking and considered.

Electronic or Written Comments:

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and

regulations, data, technical literature, or other relevant publications.

### **Public Hearing**

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., m.s.t. on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We

will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### **Public Meeting**

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will make a written summary of each meeting a part of the administrative record.

## **VI. Procedural Determinations**

### **Executive Order 12866 - Regulatory Planning and Review**

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

## **Other Laws and Executive Orders Affecting Rulemaking**

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

/s/ Allen D. Klein

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Allen D. Klein

Director, Western Region

January 6, 2012

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Date

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Date: 03/27/2012]